

MHKO100010352012

REGULAR CIVIL SUIT NO. 190/2012

Dattu Babu Jedhe
Vs
Ramu Yallappa Kamble

ORDER BELOW EXHIBIT NO. 88

Plaintiff has filed this application with two prayers that, the original agreement of sell document pleased be exhibited because it is come under the purview of Section 92 of the BSA, 2023 and to frame additional issue as per Section 16-C of the Specific Relief Act in this suit.

02. Other side has objected and filed say vide Exh.90. It is stated in this say that, present matter is posted for final argument stage and at this stage this application is not maintainable. Same prayer was made by the plaintiff at the time of trial before this Court. But, want of evidence that prayer was rejected. The alleged agreement to sell document is unregistered. Therefore, it cannot be admitted as an evidence. Plaintiff has to be proved by the mode given in Evidence Act. Unfortunately, plaintiff has failed to prove the alleged document before this Court. Now, he cannot pray through this application for mark exhibit the said document. Apart of this prayer, the another prayer for framing additional issue is also not maintainable, because plaintiff has not pleaded in his plaint in that regard. Hence, without pleading additional issue in that context cannot be framed by this Court. Ultimately, prayed to reject the application.

03. Heard the Ld. Advocates of both side at length. Read

application and say filed thereon. First prayer is made for mark exhibit the original agreement of sell executed on 10/04/1973. It is submission of Ld. Advocate of plaintiff that, the essential ingredients of Section 92 of the BSA, 2023 has been fulfilled, because this document is more than 30 years old and it has produced from the proper custody i.e. plaintiff. Therefore, Court may presume that a signature and every other part of this document which purports to be in the handwriting of particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the person by whom it purports to be executed and attested.

04. In present case, this document had been written by Gaus Shiraj Attar, who has been died. To prove the genuineness of the said document, plaintiff has filed this application under Section 92 of the BSA, 2023. This document had executed on dated 10/04/1973 and present suit has been filed in the year 2012, it means this document is more than 30 years old. Therefore, under the above said provision of BSA, this document has presumption about its genuineness. It is settled law of principle that, unregistered agreement to sell shall be admissible in evidence in suit for specific performance of contract. Hence, it would be just and proper to mark exhibit to this document.

05. Now, to come on next prayer, it is regarding the additional issue. This suit is filed for specific performance of contract against the defendant and main document is the agreement of sell executed on dated 10/04/1973. There is specific pleading of plaintiff in para 3 of his plaint which attract Section 16-C of Specific Performance Act. But, in consonance of said pleading issue has not

been framed vide Exh.29. Therefore, I am of the opinion that, the prayer for additional issue is just and proper, if additional issue will frame then no prejudice would be caused to other side. Hence, in above reason I am allowed the application and pass following order.

-: ORDER :-

01. The application is allowed.
02. The original document of **agreement to sell executed on dated 10/04/1973 is marked Exhibit No. 91**
03. Additional issue number 8 shall be reproduced below Exh.29, which is as under :
8) Does the plaintiff prove that, he was / has been ready and willing to pay expenses to defendant for conversion of suit property in non-agriculture ?
04. Parties are at liberty to adduce additional evidence in regarding the additional issue, if any till next date.

(Dictated and pronounced in open Court)

Gadhinglaj.
Date: 03/09/2025.

(S. D. Mehta)
Jt. Civil Judge, Junior Division,
Gadhinglaj.